

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

0-0

NICHOLAS S. MEARS, :

CIV. 05-4008

Plaintiff, :

vs. :

**JOINT ANSWER**

CITY OF SIOUX FALLS, a :

GOVERNMENTAL ENTITY, JERRY :

MUNDT and STEVE FIEGEN, :

INDIVIDUALLY AND AS AGENTS OF :

THE CITY OF SIOUX FALLS, :

Defendants. :

0-0

Defendants City of Sioux Falls, a governmental entity ("Sioux Falls"), Jerry Mundt ("Mundt"), and Steve Fiegen ("Fiegen") for their Joint Answer to Plaintiff's Complaint state:

1. Plaintiff's Complaint and each count of the Complaint fails to state a claim or cause of action against these defendants, or any of them, upon which relief can be granted.
2. Deny every allegation contained in Plaintiff's Complaint and each count of the Complaint except those which are specifically admitted or qualified in this Joint Answer.

3. As an affirmative defense, allege that Mundt and Fiegen are protected by the doctrine of qualified immunity thus shielding them from any liability in this case.

4. As a further affirmative defense, allege that as Mundt and Fiegen are protected by qualified immunity, City has no *respondeat superior* liability to plaintiff.

5. Admit, on information and belief, paragraphs 3 through 8 and 10 and 27 of Plaintiff's Complaint.

6. As an affirmative defense, allege that the grand jury's indictment of plaintiff establishes probable cause as a matter of law.

7. As a further affirmative defense, allege that the disposition of criminal charges against plaintiff is inadmissible in the present proceeding.

8. Specifically deny that plaintiff has been damaged or injured in the manner or to the extent set forth in his Complaint.

9. Specifically deny that Plaintiff's Complaint and each count of the Complaint sets forth a claim or cause of action against these defendants, or any of them, entitling him to punitive damages.

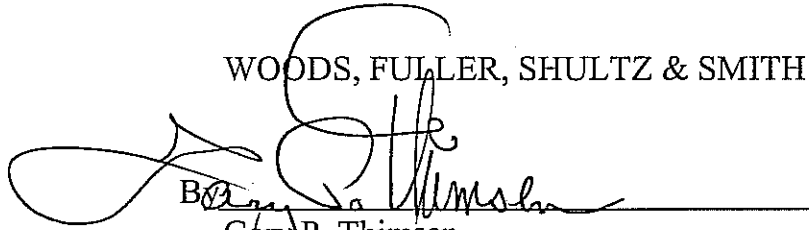
10. Specifically deny that City has been deliberately indifferent to the deprivation of suspects' civil rights either through lack of training or indifference.

WHEREFORE, Defendants request that Plaintiff's Complaint be dismissed on its merits and that he recover nothing in this action; that Defendants recover their costs and

disbursements, including reasonable attorney's fees, and for such other relief as the Court deems proper in this case.

Dated this 10<sup>th</sup> day of February, 2005.

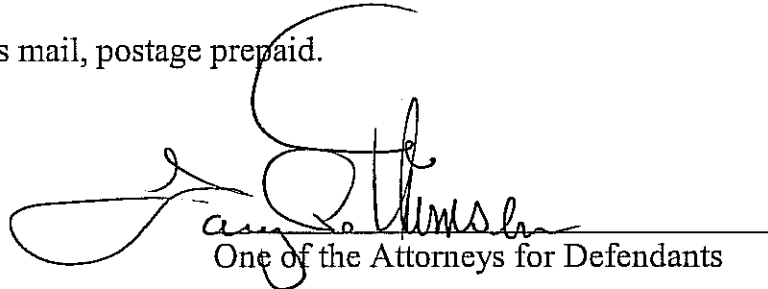
WOODS, FULLER, SHULTZ & SMITH P.C.



Gary P. Thimsen  
300 South Phillips Avenue, Suite 300  
Post Office Box 5027  
Sioux Falls, South Dakota 57117-5027  
(605) 336-3890  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of February, 2005, I sent to Jack Der Hagopian, Der Hagopian Law Office, 2900 East 26th Street, Suite 308, Sioux Falls, South Dakota 57103, attorneys for Plaintiff, a true and correct copy of the foregoing Joint Answer by first-class mail, postage prepaid.



One of the Attorneys for Defendants